

United States District Court  
For the Northern District of California

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9 IN THE UNITED STATES DISTRICT COURT

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13 OSCAR GATES, No. C 88-2779 WHA

14 Petitioner,  
15 v.  
16 KEVIN CHAPPELL, Warden,  
17 Respondent.

18 \_\_\_\_\_ /  
19 ORDER DENYING MOTION FOR  
20 STAY AND, IN THE ALTERNATIVE,  
21 CERTIFICATION OF ISSUES FOR  
22 APPELLATE REVIEW

23 Petitioner Oscar Gates has moved for a stay of proceedings pending efforts to restore  
24 him to competency. In the alternative, petitioner has moved for this Court to certify two  
25 questions for appellate review under 28 U.S.C. § 1292(b). For the following reasons,  
26 petitioner's motion is **DENIED** in its entirety.

27 **BACKGROUND**

28 This matter was stayed in 2004 following an adjudication of mental incompetency,  
based on *Rohan ex. rel. Gates v. Woodford* ("Gates"), 334 F.3d 803 (9<sup>th</sup> Cir. 2003).<sup>1</sup> At that

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28 <sup>1</sup> Petitioner was also adjudicated to be mentally incompetent in 1994, as part of the proceedings in this  
habeas matter, and in 1973, in a prior state criminal matter. This Court has ordered a subsequent competency  
examination of petitioner (*see* Docket # 740), as ten years have passed since petitioner's previous evaluation.  
Additionally, Dr. Joseph Satten, who conducted the 2004 examination, is now deceased.

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1 time, attorneys for petitioner and respondent agreed that petitioner was incompetent. On  
2 January 8, 2013, the Supreme Court decided *Ryan v. Gonzales*, abrogating *Gates* and holding  
3 that an incompetent capital prisoner has no right to an indefinite stay of habeas proceedings.  
4 133 S. Ct. 696, 706-709. The Supreme Court further held that while the decision to grant a  
5 temporary stay is within the discretion of the district court, an indefinite stay is inappropriate if  
6 there is no reasonable hope the petitioner will regain competence in the foreseeable future.

7 *Ibid.*

8 The stay in this matter was subsequently lifted, and the parties commenced briefing on  
9 the merits and settlement proceedings.<sup>2</sup> In addition, the Court ordered the parties to meet and  
10 confer, and to present a joint plan for further examination of petitioner Gates. The parties were  
11 unable to submit a joint plan, although they did find certain areas of agreement. Per an Order  
12 filed June 5, 2014, the Court appointed an expert to examine petitioner Gates, and set a  
13 timetable and parameters for the examination and subsequent filings. The parties have  
14 completed merits briefing on numerous claims, and merits briefing on additional claims is in  
15 progress.

## DISCUSSION

### I. Stay Request

18 Petitioner has not demonstrated good cause for a stay in this matter. This matter, which  
19 was filed in this Court in 1988, concerns crimes which occurred in 1979. Orderly resolution of  
20 petitioner's claims is imperative for both petitioner and respondent. This matter was stayed for  
21 many years and, given the lengthy delay already imposed from the more than 25 years this  
22 petition has been pending in the district court alone, the need to move this petition to resolution  
23 is substantial. If the petition is determined to have merit, then it will be harder with each  
24 passing day for the district attorney to retry the case. If the petition is determined to have no  
25 merit, then the public policy of California and the judgment of the jury and trial court in  
26 imposing the death sentence will have been frustrated by the delay. If the issues in this petition  
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28 <sup>2</sup> The Court understands that there are no currently scheduled settlement conferences. Accordingly, the parties are directed to focus on merits briefing and petitioner's upcoming examination.

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were all highly dependent on petitioner's memory and judgment, and if there were a substantial chance that a delay could be used to materially improve petitioner's ability to assist habeas counsel, then a closer question would be presented as to the best balance of equities.<sup>3</sup> As no such showing has been made, the balance of equities favors moving ahead and continuing the hard work of evaluating the many claims presented in the petition, a process that will take many months.

In *Gonzales*, the Supreme Court addressed the following question: “whether the incompetence of a state prisoner requires suspension of the prisoner's federal habeas corpus proceedings.” 133 S. Ct. at 700. In a 9-0 decision, the Court held “that neither 18 U.S.C. § 3599 nor 18 U.S.C. § 4241 provides such a right and that the Courts of Appeals for the Ninth and Sixth Circuits both erred in holding that district courts must stay federal habeas proceedings when petitioners are adjudged incompetent.” *Ibid.* In so doing, the Court held that the Ninth Circuit's decision in *Gates* was “incorrect” in suggesting that habeas petitioners had a right to competency based on the Due Process Clause, and also overturned the Ninth Circuit's finding that a capital habeas petitioner's statutory right to counsel<sup>4</sup> could be eviscerated if he or she were incompetent. *Id.* at 704-705.

As the *Gonzales* Court made clear, an incompetent capital habeas petitioner is not entitled to a stay of federal habeas proceedings. *Id.* at 700. Rather, decisions regarding whether or not to grant a stay in such circumstances are “generally left to the sound discretion of the district courts.” *Id.* at 708 (citing *Schrivo v. Landrigan*, 550 U.S. 465, 473 (2007)). In this case, petitioner has not demonstrated the need for a stay of the case pending restoration efforts; accordingly, his request for a stay is **DENIED**.

## **II. Interlocutory Appeal**

Petitioner requests that this Court certify the following two questions for appellate

<sup>3</sup> The Court understands that petitioner's counsel has not attempted to communicate with petitioner for many years.

<sup>4</sup> 18 U.S.C. § 3599(a)(2) guarantees federal habeas petitioners on death row the right to federally funded counsel.

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1 review: 1) whether *Gonzales*' limitation on stays for incompetent prisoners applies to pre-  
2 AEDPA cases; and 2) whether, even if it does apply, a limited stay pending restoration is  
3 required under the facts of this case. "A non-final order may be certified for interlocutory  
4 appeal where it 'involves a controlling question of law as to which there is a substantial ground  
5 for difference of opinion' and where 'an immediate appeal from the order may materially  
6 advance the ultimate termination of the litigation.'" *Reese v. BP Exploration Inc.*, 643 F. 3d  
7 681, 687-688 (9th Cir. 2011).

8 The Court finds that petitioner has not demonstrated good cause for an interlocutory  
9 appeal. To begin with, petitioner has not shown that there is a substantial ground for difference  
10 of opinion regarding a controlling question of law. Petitioner argues that it is an open question  
11 whether *Gonzales* applies to pre-AEDPA cases such as his. *Gonzales*, however, was not limited  
12 to post-AEDPA cases. As discussed *supra*, the Supreme Court held in a 9-0 opinion that the  
13 incompetence of a capital habeas petitioner does not require suspension of the petitioner's  
14 federal habeas proceedings. *Gonzales*, 133 S. Ct. at 700. In so doing, the Supreme Court  
15 specifically held that the Ninth Circuit's decision in *Gates*, petitioner's pre-AEDPA case, was  
16 incorrect. *Id.* at 704-705. Given that the *Gonzales* Court addressed and rejected the reasoning  
17 in a pre-AEDPA case, the Court finds that there is no substantial ground for a difference of  
18 opinion as to whether *Gonzales* is controlling law here.

19 Petitioner points out that the Ninth Circuit is poised to address this issue in *Medina v.*  
20 *Chappell* and *Medina v. Wong* (09-99015), argued and submitted on March 19, 2014. The fact  
21 that the appellate court is considering this issue, however, does not establish that there is a  
22 substantial ground for difference of opinion regarding the unanimous decision in *Gonzales*,  
23 where the Supreme Court disapproved of the Ninth Circuit's decision concerning the  
24 requirement of stays in this pre-AEDPA matter.

25 Petitioner also cannot demonstrate that an immediate appeal will advance the ultimate  
26 termination of this litigation. As petitioner notes, the Ninth Circuit has already had briefing and  
27 oral argument on the issue of whether *Gonzales* applies to pre-AEDPA cases. The issue that  
28 petitioner wants to appeal is already being decided by the Ninth Circuit; if that issue is resolved

1 in petitioner's favor, he may file a motion for leave to file a motion to reconsider in this Court.  
2 Until then, however, this Court finds that the *Gonzales* decision applies to petitioner's pre-  
3 AEDPA federal habeas proceedings, and that the best way to materially advance the ultimate  
4 termination of this litigation is to continue to address the merits of petitioner's claims.

5 **CONCLUSION**

6 For the foregoing reasons, petitioner's motion for a stay and, in the alternative, motion  
7 to certify two questions for appellate review under 28 U.S.C. § 1292(b), is **DENIED**.

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10 **IT IS SO ORDERED.**

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12 Dated: June 12, 2014.

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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE